

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION.

FIRST APPEAL NO.1686 OF 2005.

WITH

CIVIL APPLICATION NO.3419 OF 2005.

Dr.Kiran Shekhar w/o. Dr.Naresh

Shekhar : Appellant.

versus

Federation of Obstetrics &

Gynecological Societies of

India (FOGSI) & ors. : Respondents.

Mr.P.R.Arjunwadkar for the appellant.

CORAM : D.G.DESHPANDE, J.

DATED : 06th September 2005.

ORAL ORDER

1. Heard. This appeal is filed by the plaintiff against the judgment and decree of the

City Civil Court dismissing his suit. The plaintiff, who is the doctor and member of Respondent No.1, has filed a suit for declaration that the election of defendant No.5 as President of Defendant No.1 held during 2003 for the year 2005 is invalid, null and void and the same be set aside. As per election procedure list of members as existing on 31.12.2002 was prepared. Nominations were sought from the registered societies all over the country in May 2003 and that aspect was open between 1.5.2003 and 31.5.2003. Nominations were closed on 31.5.2003. For the said election four covers were to be sent to the individual voters. Then after following procedure, packets were to be received by the end of August 2003. They were to be scrutinised by the committed i.e. N.N.Raiji & Co. Chartered Accountants and after considering the validity of the ballot papers, the counting was done on 21.9.2003.

2. The plaintiff has challenged the entire election process. According to him, it is manageable and manoeuvrable and it has to be reconsidered. The plaintiff thereafter raised number of contentions. But the court framed

following Issues :-

1. Whether the Plaintiff proves that the procedure adopted implemented by the 1st Defendant is improper or capable of being misused?
- 2a. Whether the defendant No.5 was validly nominated for contesting the election for the post of President of FOGSI for the year 2005?
- 2b. Whether the Defendant No.5 indulged in any malpractice for obtaining votes for election to the post of President or FOGSI for the year 2005?
3. Whether the defendant proves that the suit is bad for non obtaining permission from the Charity Commissioner?
4. Whether Plaintiff is entitled to get declaration as sought for in the plaint?
5. What is the order?

The Court decided all the Issues against the plaintiff and dismissed his suit.

3. Learned Counsel Mr.Arjunwadkar, appearing for the appellant, repeatedly urged and stress that the entire process of election was such that there was no control over the election process at any time and anybody could manage to get elected by managing or manoeuvrabling the process. In fact the manner in which the elections are to be conducted is an internal matter of the society i.e. defendant No.1. The Court cannot substitute to its own reasoning for the said election process. If at all any amendment or change is required, it is for the majority of the members to get the said changes approved in the constitution or society or bye-laws whatever that may be. In spite of this, by way of safe guard the trial court made certain suggestions in its order about which there is no counter appeal by the respondent. So far as Issue Nos. 2a and 2b are concerned, the court held that they have

become redundant.

4. It appears that the Court has also framed additional Issues which are as under :-

ADDITIONAL ISSUES :-

1. Whether the Defendant Nos. 1 to 4 prove that the suit has become infructuous as alleged in para 1 of the written statement?
2. Whether the suit is liable to be dismissed for gross delay and latches alleged in paragraph 8 of the written statement of Defendant Nos. 1 to 4?
3. Whether the Defendant Nos.1 to 4 proves that the Plaintiff is guilty of suppressing material facts and documents alleged in paragraph 4 of the written statement ?
4. Whether it is proved by the Plaintiff that election Results were declared on the basis of genuine ballot papers?

5. Whether it is proved by the plaintiff that the procedure of sending ballot papers is not satisfactory for full proof procedure as alleged in paragraph 10 of the plaint?
6. Whether it is proved by the Plaintiff that the entire process of election has been allowed to be proceeded in a very haphazard and unregistered manner as alleged in paragraph 11 of the plaint?
7. Whether the Plaintiff proves that the elections process is without any control or system as alleged in paragraph 17?

1st Issue, out of the Additional Issues, is vital and important that the suit has come infructuous.

4. It is pertinent to note that there were 19000 members of Respondent No.1. They are spread over the entire country and, therefore, no other method excepting by postal ballot appears to be proper. Defendant No.1 is a Federation of Obstetrics & Gynecological Societies of India

(FOGSI). Admittedly and obviously the members of the society generally and mainly would be Gynaecologists and Obstetricians scattered all over the country. They would not generally prefer to sacrifice their work and assemble at a particular place for participating in election. In any case if any change in the election process is required in such a society or organisation having 19000 members all over the country, then that has to be dealt with by the members themselves in a proper manner and not by any court of law. It is pertinent to note that even though the plaintiff filed the suit, the plaintiff did not and could not get any ad interim order regarding holding of election or stopping the process of election. As per the affidavit of Respondent No.4, the only order that plaintiff got was about the safe custody of sealed box containing ballot papers. Then another application was made by the plaintiff to stop the counting of ballots. That was rejected. The plaintiff preferred appeal to this court. But Justice Kanade rejected the appeal. It will be clear that the plaintiff has failed to make out any case for grant of any relief. The trial Court perfectly justified in dismissed suit.

Hence, the appeal is dismissed with civil application. No order as to costs.

[D.G.DESHPANDE, J]